



**D.C. OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION**

**REQUEST FOR PROPOSALS**

**LOGAN ELEMENTARY SCHOOL RENOVATION FOR THE WATKINS  
ELEMENTARY MONTESSORI SCHOOL PROGRAM (SHELTERED MARKET)**

**May 2, 2011**

**Proposal Due Date:** May 24, 2011 by 2 p.m. EDT

**Preproposal Conference:** May 11, 2011 at 10:30 a.m. EDT  
RFK Stadium – Lot 4, Gate F entrance

**Contact:** Thomas D. Bridenbaugh  
Leftwich & Ludaway, LLC  
1400 K Street, NW  
Suite 1000  
Washington, D.C. 20005  
Phone: (202) 434-9100

**Solicitation Number:** GM-11-S-0502-FM

## **Executive Summary**

The Office of Public Education Facilities Modernization (“Office” or “OPEFM”) is issuing this Request for Proposals (“RFP”) to engage a contractor to complete the renovation of Logan Elementary School located at 215 G Street, NE, Washington, DC (the “Project”). The Watkins Elementary Montessori School Program will be relocated to Logan ES for classes beginning in the fall of 2011. The Montessori School Program will expand from 7 classrooms to 9 classrooms for the 2011/ 2012 school year, and, the move to Logan ES will accommodate future expansion of the program. Logan ES is currently vacant with the exception of a few rooms occupied by a DCPS agency. DCPS Professional Development is performed at existing trailers on the same site as Logan ES and this program will remain. Logan ES was most recently used as swing space for the School Without Walls SHS and is currently scheduled for a Phase I Modernization during the summer of 2015. In general, the Project will include: (i) classroom improvements; (ii) play area renovations; (iii) a warming kitchen; (iv) toilet room renovations; and (v) improvements to non-classroom space (e.g., cafeteria, administrative areas, entry foyer). The Contractor will be required to complete the work in accordance with the Drawings and Specifications attached as **Attachment A** and to provide all labor, materials, supervision and other services as may be necessary to complete the Project.

**This solicitation is being set aside in the sheltered market and only businesses that are certified by the District of Columbia Department of Small and Local Business Development as small or disadvantaged business enterprises are eligible to submit bids.**

### **A.1 Form of Contract**

The Form of Contract is included as **Attachment G**. Offerors should carefully review the Form of Contract when submitting their proposal. To the extent there are any inconsistencies between this RFP and the Form of Contract, the Form of Contract shall prevail. Offerors are further advised that they are required to submit their proposal premised upon entering into a contract that is substantially similar to the Form of Contract and that any proposed changes to the Form of Contract must be clearly identified and described in their proposal. A proposal that fails to specifically identify and describe the requested changes shall be deemed non-responsive.

### **A.2 Contractor’s Compensation**

The Office intends to obtain lump sum bids for this work. The lump sum bid by the Offeror should include sufficient funding to cover all of the costs necessary to fully complete the Project, including, but not limited to, labor, materials, trade subcontractor costs, general conditions, insurance and bonding, home office overhead and profit. The lump sum should also include sufficient funding to fund items that are not specifically identified on the drawings but which are reasonably inferable therefrom. Offeror’s lump sum bid should include the following allowances, as further identified on **Attachment A**:

1. Remove all light fixture lenses and clean. Replace any lamps or ballasts as required. (\$10,000.00)
2. Interior door and hardware repairs. (\$5,000.00)
3. Replace or add locks to all hallway electrical panels. (\$2,000.00)
4. Replace existing window A/C unit with similar unit. (\$10,000.00)
5. Repair basement leaks. (\$35,000.00)
6. Final interior deep cleaning of building. This includes all portions of the interior of the building including "For Future Use spaces." (\$15,000.00)
7. Striping on asphalt in plaza area. (\$2,500.00)
8. Window Repairs. (\$5,000.00)

Offeror shall also quote the following add/alternates, as further identified on **Attachment A**:

1. Add gas piping to 2 boilers per plans (Washington Gas fees by owner).
2. Remove and replace with new, all exterior doors and hardware per direction given in Note 20 on Drawing CS-100.
3. Paint all 1st floor hallways and 2nd floor west wing hallway including all doors and trim (2 colors).
4. Wall removal and demolition in Classroom 105 as shown in drawings.
5. Confirm existing water coolers are located at appropriate child height (2'-0" to spout) (lump sum add/alt price to survey). If water coolers must be lowered provide add/alternate unit price for modification.
6. Provide new 4'-0" high faux wrought iron aluminum black picket fence in lieu of 4'-0" black vinyl coated chain link along 3rd Street and wrapping around to east wing entrance, as shown on Drawing A.1.

### **A.3 Economic Inclusion**

The Office requires that Local, Small and Disadvantaged Business Enterprises ("LSDBEs") participate in this project to the greatest extent possible and desires that such businesses perform at least fifty percent (50%) of the work under this procurement. At least thirty five percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Commission, and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises. The Office will also require that the Contractor and all of its subconsultants, subcontractors, and suppliers, enter into a First Source Employment Agreement with the Department of Employment Services and hire fifty-one percent (51%) District residents for all new jobs created on the project. Please see **Part C** of this RFP for additional information.

### **A.4 Selection Criteria**

Proposals will be evaluated in accordance with **Part D** of this RFP. The following evaluation criteria will be used:

- Experience & References (15 points)
- Key Personnel (10 points)
- Project Management Plan (10 Points)
- Preliminary Construction Schedule (10 points)
- Cost (45 points)
- LSDBE Compliance/Utilization (10 points)

#### **A.5 Sheltered Market**

**This solicitation is being set aside in the sheltered market and only businesses that are certified by the District of Columbia Department of Small and Local Business Development as small or disadvantaged business enterprises are eligible to submit bids.**

#### **A.6 Project Schedule**

The preliminary project schedule is as follows:

- |                          |                   |
|--------------------------|-------------------|
| • Notice to Proceed      | - June 3, 2011    |
| • Substantial Completion | - August 14, 2011 |

#### **A.7 Procurement Schedule**

The schedule for this procurement is as follows:

- |   |                            |
|---|----------------------------|
| • Issue RFP                             | - May 2, 2011              |
| • Pre-proposal Conference               | - May 11, 2011 at 10:30 am |
| • Last Day for Questions/Clarifications | - May 19, 2011             |
| • Proposals Due                         | - May 24, 2011 at 2:00 pm  |
| • Notice of Award                       | - June 1, 2011             |

#### **A.8 Attachments**

- |              |                               |
|--------------|-------------------------------|
| Attachment A | - Drawings and Specifications |
| Attachment B | - Offer Letter                |
| Attachment C | - Disclosure Statement        |
| Attachment D | - Tax Affidavit               |
| Attachment E | - Davis Bacon Wage Rates      |
| Attachment F | - Bid Guaranty Certification  |
| Attachment G | - Form of Contract            |

## **SECTION B            SCOPE OF WORK**

### **B.1     Scope of Work**

In general, the selected Contractor shall be required to provide all labor, tools, equipment and materials necessary to perform the work called for in the drawings and specifications. To the extent there is an inconsistency between the drawings and specification, the Contractor shall be required to provide the more expensive requirement. Prior to submitting its proposal, each Offeror shall carefully review the drawings and specifications and shall bring any inconsistency or error in the drawings and specifications to the attention of the Office in writing. To the extent that a competent contractor could have identified any such inconsistency or error, such inconsistency or error shall not serve as the basis for a change order, and the Contractor shall assume the risk of such inconsistency or error. The Project must be completed no later than August 14, 2011.

**B.1.1** The selected Contractor shall perform all of the work in first class and workmanlike manner. Any equipment or materials called for in the drawings shall be new unless otherwise approved by the Office in advance and in writing.

**B.1.2** The Contractor shall provide submittals as indicated in the drawings to the Office for its review and approval prior to proceeding with the work.

**B.1.3** The Contractor's scope of work shall include the installation and provision of such safety barricades and enclosures as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law.

**B.1.4** The Contractor, at no additional cost to OPEFM, shall provide such safety barricades, enclosures and overhead protection as may reasonably be required by OPEFM and as may be necessary to safely implement the Work and to remove such at the end of the work and shall leave the site in broom clean condition.

**B.1.5** With the exception of the building permit, the Contractor shall be responsible for obtaining all job permits and approvals from the Department of Consumer and Regulatory Affairs that are required to perform and complete the installation at no additional cost to the Office.

**B.1.6** The Office will hold any necessary abatement and hygienist contracts for the abatement of hazardous materials on the Project site. The selected contractor will be required to coordinate the abatement efforts with the abatement contractors.

**B.1.7** The Contractor's scope of work shall include all necessary maintenance of traffic measures, including, but not limited to, signs, flagman, steel plates, etc. The Contractor shall be responsible for preparing any necessary maintenance of traffic plans and for obtaining any required lane closure permits.

**B.1.8** The Contractor shall leave the site in a clean and orderly fashion. All trenches shall be neatly and properly filled and seeded in accordance with the drawings, if necessary.

**B.1.9** The Contractor shall provide a construction entrance and wheel washing station, if necessary. The Contractor shall prevent the accumulation of mud or dirt on the surrounding rounds and shall be responsible for cleaning and/or removing any such accumulation that may occur.

**B.1.10** The costs of any necessary security should be included in the Offeror's lump sum bid.

## **B.2 Supervision & Coordination**

The selected Contractor will be required to properly supervise and coordinate its work. At a minimum, it is envisioned that the Contractor will be required to undertake the following tasks:

- Participate and assist in Project/Planning meetings
- Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log
- Conduct periodic progress meetings following a Contractor generated agenda with the Program Manager
- Provide general safety and signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project
- Prepare payment requests, verify accuracy and forward to Office for approval and payment
- Assemble close-out documents required
- Provide assistance to the Office through any applicable warranty periods

## **B.3 Key Personnel**

The Offeror's personnel should have the necessary experience and licenses to perform the required work. Toward that end, Offerors should include within the proposal a description of the staff available to perform this work and their qualifications. Key personnel shall include, at a minimum, the following individuals: (i) the Project Executive; (ii) the Field Superintendent; and (iii) the Project Manager who will be responsible for the Project. The Contractor will not be permitted to reassign any of the key personnel unless the Office approves the proposed reassignment and the proposed replacement.

#### **B.4 Licensing, Accreditation and Registration**

The Contractor and all of its subcontractors and subconsultants (regardless of tier) shall comply with all applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the contract.

#### **B.5 Conformance with Laws**

It shall be the responsibility of the Contractor to perform under the contract in conformance with the Office's Procurement Regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental bodies.

#### **B.6 Davis-Bacon Act**

The Davis-Bacon Act is applicable to this Project. As such, the Contractor and its trade subcontractors shall comply with the wage and reporting requirements imposed by that Act. Applicable wage determinations are attached hereto as **Attachment E**.

#### **B.7 Apprenticeship Act**

The Apprenticeship Act shall apply to this contract and the Contractor and all of its trade subcontractors shall be required to comply with that act.

#### **B.8 Time of the Essence**

Time is of the essence with respect to the contract. The Project must be substantially complete by August 14, 2011. As such, the Contractor must dedicate such personnel and other resources as are necessary to ensure that the Project is completed on-time and in a diligent, skilled, and professional manner.

## **SECTION C                      ECONOMIC INCLUSION**

### **C.1     Preference for Small, Local, and Disadvantaged Business Enterprises**

**General:** Under the provisions of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33 (codified at D.C. Code § 2-218.01 et seq.), preferences shall be given to Offerors that are certified by the Department of Small and Local Business Development as being a small business enterprise, having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, being a local business enterprise with its principal office located in an enterprise zone, being a veteran-owned business enterprise, or being a local manufacturing business enterprise. (A copy of the certification acknowledgment letter must be submitted with the Offeror's Proposal.) In accordance with these laws, the following preferences shall be awarded in evaluating an Offeror's proposal:

- Three (3) preference points shall be awarded if the Offeror is certified as having a small business enterprise.
- Five (5) preference points shall be awarded if the Offeror is certified as having a resident business ownership.
- Five (5) points shall be awarded if the Offeror is certified as having a longtime resident business.
- Two (2) preference points shall be awarded if the Offeror is certified as a local business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as being a local business enterprise with its principal office located in an enterprise zone.
- Two (2) preference points shall be awarded if the Offeror is certified as a disadvantaged business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as a veteran-owned business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as a local manufacturing business enterprise.

Offerors may qualify for more than one of these categories, so that the maximum number of points available under this section is 12 points.

**Information:** For information regarding the application process, contact the Department of Small and Local Business Development at the following address or telephone number:

Department of Small and Local Business Development  
One Judiciary Square Building  
441 4th Street, NW, 9th Floor  
Washington, DC 20001  
(202) 727-3900 (Telephone Number)  
(202) 724-3786 (Facsimile Number)



## **C.2 SLDBE Participation**

The Office requires that significant participation by business enterprises certified by the Department of Small and Local Business Development as: (i) a local business enterprise; (ii) a small business enterprise; (iii) a disadvantaged business enterprise; (iv) having a owned resident business; (v) being a longtime business resident; or (vi) having a local business enterprise with its principal office located in an enterprise zone. Accordingly, and in addition to the preference points conferred by **Section C.1**, the Office requires that business enterprises so certified must participate in at least 50% of the development. Of this amount, 35% must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Commission and 20% to entities that are certified as Disadvantaged Business Enterprises. Offerors will be required to submit a Local Business Enterprise Utilization Plan with their proposals. The Utilization Plan must demonstrate how this requirement will be met and, to the extent possible at this stage in the project, should identify the specific firms that will be used and their respective roles.

## **C.3 Residency Hiring Requirements for Contractors and Subcontractors**

At least fifty-one percent (51%) of the Offeror's Team and every subconsultant's employees hired after the Offeror enters into a contract with the Office, or after such subconsultant enters into a contract with the Offeror, to work on this project, shall be residents of the District of Columbia.

Upon execution of the contract, the Offeror and all of its member firms, if any, and each of its subcontractors and subconsultants shall submit to the Office a list of current employees that will be assigned to the project, the date that they were hired and whether or not they live in the District of Columbia.

The Offeror shall comply with subchapter III of Chapter II of Title 1, and subchapter II of Chapter II of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Offeror and all member firms, subcontractors, tier subcontractors, subconsultants, and suppliers with contracts in the amount of \$100,000 or more shall be required to comply with the following: (i) enter into a First Source Employment Agreement with the D.C. Department of Employment Services ("DOES") upon execution of the contract; (ii) submit an executed First Source Agreement to DOES prior to beginning work on the project; (iii) make best efforts to hire at least 51% District residents for all new jobs created by the project; (iv) list all employment vacancies with DOES; (v) submit monthly compliance reports to DOES by the 10<sup>th</sup> of each month; (vi) at least 51% apprentices and trainees employed must be residents of the District registered in program approved by the D.C. Apprenticeship Council; and (vii) trade contractors and subcontractors with contracts in the amount of \$500,000 or more must register an apprenticeship program with the D.C. Apprenticeship Council.

#### **C.4 Apprenticeship Act**

The D.C. Apprenticeship Act of D.C. Law 2-156, (“Act”) as amended shall apply to this project. All subcontractors selected to perform work on the project on a craft-by-craft basis shall be required to comply with this Act. All terms and conditions of the D.C. Apprenticeship Council Rules and Regulations shall be implemented. Please note that 35% of all apprenticeship hours worked must be performed by District residents. The Contractor shall be liable for any subcontractor non-compliance.

## **SECTION D                      EVALUATION AND AWARD CRITERIA**

### **D.1      Evaluation Process**

The Office shall evaluate submissions and any best and final offers in accordance with the provisions of this **Section D** and the Office's Procurement Regulations.

### **D.2      Evaluation Committee**

Each submission shall be evaluated in accordance with this **Section D** by an Evaluation Committee. The Evaluation Committee shall prepare a written report summarizing its findings and submit the same to the source selection official. Based on the information submitted by the Offerors in response to this RFP and the report prepared by the Evaluation Committee, the source selection official shall select the Offeror(s) whose submissions are determined by the source selection official to be the most advantageous to the Office.

### **D.3      Oral Presentation**

The Office does not intend to interview Offerors; however, the Office reserves the right to interview Offerors in the competitive range if necessary. If the Office conducts such interviews, each Offeror within the competitive range shall make an oral presentation to the Office's Evaluation Committee, and participate in a question and answer session. The purpose of the oral presentation and the question and answer session is to permit the Evaluation Committee to fully understand and assess the qualifications of each Offeror and the Offeror's key personnel. The submission will be re-scored at the conclusion of the oral presentation.

#### **D.3.1    Length of Oral Presentation**

Each Offeror will be given up to 30 minutes to make the presentation. At the end of the initial presentation, there will be a break for approximately 15 minutes for the Evaluation Committee to assess the presentation and prepare questions. The Offeror will then respond to questions from the Office's Evaluation Committee for no more than 30 minutes.

#### **D.3.2    Schedule**

The order of presentation will be selected randomly and the Offerors will be informed of their presentation date before the beginning of oral presentations. The Office reserves the right to reschedule any Offeror's presentation at the discretion of the contracting officer.

#### **D.3.3    Offeror Attendees**

The oral presentation will be made by the Offeror's personnel who will be assigned the key jobs for this project. Each Offeror will be limited to 3 persons. The job functions of the persons attending the presentation will be considered to be an indication of the Offeror's assessment of

the key areas of responsibility that are deemed essential to the successful completion of the project.

#### **D.3.4 Topics**

The Offeror may present information about its capabilities and special qualifications to serve as a Contractor for this Project, including the qualifications of key personnel.

#### **D.4 Proposal Evaluation**

Each proposal will be scored on a scale of 1 to 100 points. In addition, Offerors will be eligible to receive up to 12 preference points as described in **Section C.1** of this RFP for participation by Local, Small or Disadvantaged Business Enterprises. Thus, the maximum number of points possible is 112. The contract will be awarded to the Construction Team with the highest evaluated score.

##### **D.4.1 Experience & References (15 points)**

The Office desires to engage a Contractor with the experience necessary to realize the objectives set forth in **Section A** of this RFP. Offerors will be evaluated based on their demonstrated experience with: (i) constructing renovation projects in an urban setting; (ii) managing fast track construction projects; (iii) constructing and knowledge of school facilities; (iv) knowledge of, and access to, the local subcontracting market; and (v) knowledge of the local regulatory agencies and Code Officials. If the Offeror is a team or joint venture of multiple companies, the Evaluation Panel will consider the experience of each member of the team or joint venture in light of their role in the proposed team or joint venture. This element of the evaluation will be worth up to fifteen (15) points.

##### **D.4.2 Key Personnel (10 points)**

The Office desires that senior personnel be assigned to this project who have experience in completing similar projects on-time and on-budget. The availability and experience of the key individuals assigned to this project will be evaluated as part of this element. Proposals should identify, at a minimum: (i) the Project Executive; (ii) the Field Superintendent; and (iii) the Project Manager responsible for the Project. The availability and experience of the key individuals assigned to this project will be evaluated as part of this element.

Please provide a table that identifies the specific staff that will be assigned to this Project. The table should include: (i) the individual's name (if known); (ii) his or her title; (iii) his or her level of effort (i.e. the percentage of time devoted to this project); and (iv) the time periods during which the individual will be assigned to the Project. This table should include all personnel that will be assigned to the Project. This element of the evaluation will be worth up to ten (10) points.

#### **D.4.3 Cost (45 points)**

Offerors will be required to bid a firm fixed price. This element of the evaluation is worth up to forty five (45) points.

#### **D.4.4 LSDBE Compliance/Utilization (10 points)**

The Office desires the selected Contractor to provide the maximum level of participation for Local, Small and Disadvantaged Business Enterprises as well as employment opportunities for District of Columbia residents. Offerors will be evaluated in light of their demonstrated experience in meeting such goals and their proposed LSDBE Utilization Plan. This factor of the evaluation will be worth up to ten (10) points.

#### **D.4.5 Project Management Plan (10 Points)**

Offerors are required to submit a Project Management Plan. The Project Management Plan should clearly explain how the Design-Builder intends to manage and implement the Project. It should demonstrate a knowledge of the process and impediments that must be overcome and ensure that sufficient staffing will be provided. At a minimum, the plan should: (i) identify the key personnel and their specific roles in managing the Project; (ii) identify the key milestone dates and provide a description of how these dates will be achieved; (iii) provide a skeletal schedule of the work and the phasing of construction; and (iv) describe the key challenges inherent in this Project and explain how they will be overcome or mitigated. The Office will also consider the experience that the Design-Builder and its team members have working together on similar projects. This element of the evaluation is worth up to ten (10) points.

#### **D.4.6 Preliminary Construction Schedule (10 points)**

Offerors should submit with their Project Management Plan a schedule that shows the anticipated manner in which the Project will be constructed. The schedule should show sufficient level of detail so as to demonstrate the Offeror's understanding of the Project and the key issues related to the Project. This element of the evaluation is worth up to ten (10) points.

## **SECTION E            PROPOSAL ORGANIZATION AND SUBMISSION**

This section outlines specific information necessary for the proper organization and manner in which Offerors' Proposals should be proffered. References are made to other sections in this RFP for further explanation.

### **E.1      Submission Identification**

Submissions shall be proffered in an original and six (6) copies. The Offeror's submission shall be placed in a sealed envelope conspicuously marked: "Proposal for Logan Elementary School Renovation for the Watkins Elementary Montessori School Program (Sheltered Market)."

### **E.2      Delivery or Mailing of Submissions**

Submissions should be delivered or mailed to:

D.C. Office of Public Education Facilities Modernization  
Att'n: Melanie Bell  
2400 East Capitol Street, SE  
Washington, D.C. 20003  
Phone: (202) 698-7700

### **E.3      Date and Time for Receiving Submissions**

Submissions shall be received no later than 2:00 pm EDT, on May 24, 2011. The Offeror assumes the sole responsibility for timely delivery of its Submission, regardless of the method of delivery.

### **E.4      Submission Size, Organization and Offeror Qualifications**

All submissions shall be submitted on 8-1/2" x 11" bond paper and typewritten. Telephonic, telegraphic, and facsimile submissions shall not be accepted. The Office is interested in a qualitative approach to presentation material. Brief, clear and concise material is more desirable than quantity. The submission shall be organized as follows:

#### **E.4.1   Bid Form**

Each Offeror shall submit a bid form substantially in the form of **Attachment B**. Material deviations, in the opinion of the Office, from the bid form shall be sufficient to render the proposal non-responsive.

#### **E.4.2   Disclosure Form**

Each Offeror shall submit a Disclosure Statement substantially in the form of **Attachment C**.

### **E.4.3 Executive Summary**

Each Offer should provide a summary of no more than three pages of the information contained in the following sections.

### **E.4.4 General Team Information and Firm(s) Data**

Each Offeror should provide the following information for the principal construction firm and each of its subconsultants.

- A. Name(s), address(es), and role(s) of each firm (including all sub-consultants)
- B. Firm profile(s), including:
  - i. Age
  - ii. Firm history(ies)
  - iii. Firm size(s)
  - iv. Areas of specialty/concentration
  - v. Current firm workload(s) projected over the next six months
  - vi. Provide a list of any contracts held by the Offeror where the contract was terminated (either for default or convenience). This list should also identify any contracts that resulted in litigation or arbitration between the Owner and the Offeror. If the Offeror has multiple offices, only contracts held by the office submitting this proposal need be listed.
- C. Description of the team organization and personal qualifications of key staff, including:
  - i. Identification of the single point of contact for the Contractor.
  - ii. Resumes for each key participant on the team, including definition of that person's role, relevant project experience, and current workload over the next two years.

#### **E.4.5 Relevant Experience and Capabilities**

- A. List all projects that the Offeror has worked on in the last 5 years that are similar to this project. For purposes of this paragraph, similar shall mean construction/renovation services on school, recreation, or other municipal sites. This information may be provided in an overview matrix format or brief list; however, it should include the name and location of the facility, the name of the owner, the time frame of the project, the original budget for the project, and whether the project was delivered on-time and on-budget. If a project was not delivered on-time or on budget, a brief description of the reasons should be provided.
- B. Detailed descriptions of no more than eight (8) projects that best illustrate the team's experience and capabilities relevant to this project. On each project description, please provide all of the following information in consistent order:
  - i. Project name and location
  - ii. Name, address, contact person and telephone number for owner reference
  - iii. Brief project description including project cost, square footage, firm's scope of work, and key firm strengths exhibited
  - iv. Identification of personnel involved in the selected project who are proposed to work on this project

#### **E.4.6 Project Management Plan**

Each Offeror should submit a Project Management Plan that addresses the issues set forth in Section D.4.5 of this RFP.

#### **E.4.7 Preliminary Construction Schedule**

Each Offeror should prepare a preliminary construction schedule that shows how the Offeror intends to complete the project in a timely manner. The schedule should be prepared using a critical path method and should show key logic ties and activity durations. The schedule should demonstrate that the Offeror understands the project and has a workable method to deliver the project in a timely manner.

#### **E.4.8 Cost Information**

The Offeror should submit the Bid Form in substantially the form of **Attachment B**.



#### **E.4.9 Local Business Utilization Plan**

Each Offeror must submit a proposed Local Business Utilization Plan that identifies the specific certified business enterprises that will participate in the contract and their anticipated roles. In addition, each Offeror should provide: (i) a narrative description of similar projects and the Offeror's success in meeting such goals; and (ii) a chart, in summary form, that identifies the Offeror's major public projects over the last five years and its success in achieving such goals (creativity should be displayed regarding joint-venture and subcontractor agreements).

#### **E.4.10 Tax Affidavit**

Each Offeror must submit a tax affidavit substantially in the form of **Attachment D**. In order to be eligible for this procurement, Offerors must be in full compliance with their tax obligations to the District of Columbia government.

## **SECTION F            BIDDING PROCEDURES & PROTESTS**

### **F.1      Contact Person**

For information regarding this RFP please contact:

Thomas D. Bridenbaugh  
Leftwich & Ludaway, LLC  
1400 K Street, NW  
Suite 1000  
Washington, D.C. 20005  
Phone: (202) 434-9100  
Facsimile: (202) 783-3420

Any written questions or inquiries should be sent to Thomas Bridenbaugh at the address above.

### **F.2      Preproposal Conference**

A preproposal conference will be held on May 11, 2011 at 10:30 am EDT. The conference will be held at RFK Stadium – Lot 4, Gate F entrance. Interested Offerors are encouraged to attend.

### **F.3      Explanations to Prospective Offerors**

Each Offeror should carefully examine this Request for Proposals and any and all amendments, addenda or other revisions, and thoroughly familiarize itself with all requirements prior to proffering a submission. Should an Offeror find discrepancies or ambiguities in, or omissions from, the RFP and amendments, addenda or revisions, or otherwise desire an explanation or interpretation of the RFP, any amendments, addenda, or revisions, it must submit a request for interpretation or correction in writing. Any information given to an Offeror concerning the solicitation shall be furnished promptly to all other Offerors as an amendment or addendum to this RFP if in the sole discretion of the Office that information is necessary in proffering submissions or if the lack of it would be prejudicial to any other prospective Offerors. Oral explanations or instructions given before the award of the contract shall not be binding.

Requests should be directed to Thomas Bridenbaugh at the address listed in Section F.1 no later than the close of business on May 19, 2011. The person making the request shall be responsible for prompt delivery.

### **F.4      Protests**

Protests shall be governed by Section 131 of the Office's Procurement Regulations (5 DCMR § D131). Protests alleging defects in this solicitation must be filed prior to the time set for receipt of submissions. If an alleged defect does not exist in this initial RFP, but was incorporated into the RFP by an amendment or addendum, a protest based on that defect must be filed before the

next closing time established for proffering submissions. In all other cases, a protester shall file the protest within seven (7) days after the protester knows or should have known, whichever is earlier, of the facts and circumstances upon which the protest is based. All protests must be made in writing to the Office's Chief Contracting Officer ("CCO") and must be filed in duplicate. Protests shall be served on the Office by obtaining written and dated acknowledgment of receipt from the Office's CCO. Protests received by the Office after the indicated period shall not be considered. To expedite handling of protests, the envelope shall be labeled "Protest".

This section is intended to summarize the bid protest procedures and is for the convenience of the Offerors only. To the extent any provision of this section is inconsistent with the Procurement Regulations, the more stringent provisions shall prevail.

#### **F.5 Contract Award**

This procurement is being conducted in accordance with the provisions of Section 112 of the Office's Procurement Regulations (5 DCMR § 112).

#### **F.6 Retention of Submissions**

All submissions shall be retained by the Office and therefore shall not be returned to the Offerors. With the exception of proprietary financial information, the submissions shall become the property of the Office and the Office shall have the right to distribute or use such information as it determines.

#### **F.7 Examination of Submissions**

Offerors are expected to examine the requirements of all instructions (including all amendments, addenda, attachments and exhibits) in this RFP. Failure to do so shall be at the sole risk of the Offeror and may result in disqualification.

#### **F.8 Late Submissions: Modifications**

- A. Any submission or best and final offer received at the office designated in this RFP after the exact time specified for receipt shall not be considered.
- B. Any modification of a submission, including a modification resulting from the CCO's requests for best and final offers, is subject to the same conditions as in F.8.A stated above.
- C. The only acceptable evidence to establish the time of receipt at the Office's office is the time-date stamp of such installation on the submission wrapper or other documentary evidence of receipt maintained by the installation.

- D. Notwithstanding any other provisions of this Request for Proposals to the contrary, a late modification of an otherwise successful submission which makes its terms more favorable to the Office may be considered at any time it is received and may be accepted.
- E. Submissions shall be irrevocable and remain in full force and effect for a period not less than 120 days after receipt of submissions.

#### **F.9 No Compensation for Preparation of Submissions**

The Office shall not bear or assume any financial obligations or liabilities regarding the preparation of any submissions submitted in response to this RFP, or prepared in connection therewith, including, but without limitation, any submissions, statements, reports, data, information, materials or other documents or items.

#### **F.10 Rejection of Submissions**

The Office reserves the right, in its sole discretion:

- A. To cancel this solicitation or reject all submissions.
- B. To reject submissions that fail to prove the Offeror's responsibility.
- C. To reject submissions that contain conditions and/or contingencies that in the Office's sole judgment, make the submission indefinite, incomplete, otherwise non-responsive, or otherwise unacceptable for award.
- D. To waive minor irregularities in any submission provided such waiver does not result in an unfair advantage to any Offeror.
- E. To take any other action within the applicable Procurement Regulations or law.
- F. To reject the submission of any Offeror that has submitted a false or misleading statement, affidavit or certification in connection with such submission or this Request for Proposals.

#### **F.11 Limitation of Authority**

Only a person with prior written authority from the CCO shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clauses or conditions of the contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this RFP is not effective or binding unless made in writing and signed by the CCO or its authorized representative.

## **F.12 Non-Responsive Pricing**

In general, the Office will consider a proposal non-responsive if Offeror's price is greater than 150% of the median price submitted by other Offerors. The Office reserves the right to deem a proposal non-responsive if Offeror's price is greater than 150% of the independent government estimate.

## **SECTION G            INSURANCE REQUIREMENTS**

### **G.1     Required Insurance**

The Contractor will be required to maintain the following types of insurance throughout the life of the contract.

**G.1.1** Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Two Million Dollars (\$2,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Two Million Dollars (\$2,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage and must be maintained for a period of at least three (3) years after substantial completion occurs.

**G.1.2** Workers’ compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.

**G.1.3** Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.

### **G.2     Additional Insureds**

Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Office and the District of Columbia, and shall not be cancelable or reduced without thirty (30) days prior written notice to the Office.

### **G.3     Waiver of Subrogation**

All such insurance shall contain a waiver of subrogation against the Office and the District of Columbia, and their respective agents.

### **G.4     Strength of Insurer**

All insurance shall be placed with insurers that are reasonably acceptable to the Office and with an A.M. Best’s rating of not less than A- (Excellent) and a surplus size of not less than XV. All such insurers shall be licensed/approved to do business in the District of Columbia.

## **SECTION J            BONDS**

### **J.1     Bid Bond**

Offerors are required to submit with their proposal a bid bond in the amount of \$15,000. All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties. Alternatively, Offerors may submit a cashier's check or irrevocable letter of credit in lieu of a bid bond. However, in the event an Offeror who is awarded a contract fails to post a payment and performance bond for the full value of the contract, the Offeror shall thereby forfeit the full amount of the cashier's check or letter of credit, and the Office shall collect such funds as liquidated damages. If the Offeror chooses to submit a cashier's check or letter of credit in lieu of a bid bond, the Offeror must complete the form included as **Attachment F** and return, notarized, with the Offeror's bid. Letters of credit must be: (i) unconditional and standby; (ii) irrevocable; (iii) issued by an FDIC insured institution that is reasonably acceptable to OPEFM; and (iv) able to be drawn on in the Washington, DC metropolitan area. The letter of credit shall provide that it may be drawn upon if the holder of the letter of credit submits a signed statement by OPEFM's contracting officer stating that the Offeror has failed to enter into a contract consistent with the terms of this procurement and the Offeror's bid submitted thereunder.

### **J.2     Contractor's Payment and Performance Bond**

The Contractor will be required to post a payment and performance bond having a penal value of the contract amount.

**Attachment A**

*Drawings and Specifications*

Drawings and Specifications for the Project are available at:

<https://leftwichlaw.box.net/shared/static/us71jevkv.pdf>



Attachment B

[Contractor's Letterhead]

[Insert Date]

District of Columbia Office of Public Education Facilities Modernization  
2400 East Capitol Street, SE  
Washington, D.C. 20003

Att'n: Mr. Ollie Harper  
Acting Executive Director

Reference: Request for Proposals –  
Logan Elementary School Renovation for the Watkins Elementary Montessori  
School Program (Sheltered Market)

Dear Mr. Harper:

On behalf of [insert name of bidder] (the "Offeror"), I am pleased to submit this proposal in response to the Office of Public Education Facilities Modernization's (the "Office" or "OPEFM") Request for Proposals (the "RFP") for the Logan Elementary School Renovation for the Watkins Elementary Montessori School Program (Sheltered Market). The Offeror has reviewed the RFP and the attachments thereto, any addenda thereto, and the proposed Form of Contract (collectively, the "Bid Documents") and has conducted such due diligence and analysis as the Offeror, in its sole judgment, has deemed necessary in order to submit its Proposal in response to the RFP. The Offeror's proposal, the Lump Sum Price (as defined in paragraph A), and the Add/Alternates (as defined in paragraph B) are based on the Bid Documents as issued and assume no material alteration of the terms of the Bid Documents. (Collectively, the proposal, the Lump Sum Price, and the Add/Alternates are referred to as the "Offeror's Bid".)

The Offeror's Bid is as follows:

A. The Lump Sum Contract Price is: \$\_\_\_\_\_

B. Add/Alternates:

- i. Add gas piping to 2 boilers per plans: \$\_\_\_\_\_
- ii. Remove and replace with new, all exterior doors &  
Hardware per direction given in Note 20 on Drawing CS-100: \$\_\_\_\_\_
- iii. Paint all 1st floor hallways and 2nd floor west wing hallway  
including all doors & trim (2 colors): \$\_\_\_\_\_
- iv. Wall removal & demo in Classroom 105 as shown in drawings. \$\_\_\_\_\_
- v. A. Lump sum price to confirm whether water coolers must be  
lowered to an appropriate child height (2'-0" to spout). \$\_\_\_\_\_
- B. Unit price per cooler to modify to child height. \$\_\_\_\_\_
- vi. Provide new 4'-0" high faux wrought iron aluminum black picket  
fence in lieu of 4'-0" black vinyl coated chain link along 3rd Street  
& wrapping around to east wing entrance, as shown on Sheet A.1 \$\_\_\_\_\_

The Offeror acknowledges and understands that the Lump Sum Contract Price and Add/Alternate Prices are firm, fixed prices to fully complete the work described in the RFP and that such amount includes funding for work which is not described in the RFP but which is reasonably inferable from the RFP.

The Offeror's Bid is based on and subject to the following conditions:

1. The Offeror agrees to hold its proposal open for a period of at least one hundred twenty (120) days after the date of the bid.
2. Assuming the Offeror is selected by the Office and subject only to the changes requested in paragraph 5, the Offeror agrees to enter into a contract with the Office on the terms and conditions described in the Bid Documents within ten (10) days of the notice of the award.
3. Both the Offeror and the undersigned represent and warrant that the undersigned has the full legal authority to submit this bid form and bind the Offeror to the terms of the Offeror's Bid. The Offeror further represents and warrants that no further action or approval must be obtained by the Offeror in order to authorize the terms of the Offeror's Bid.
4. The Offeror and its principal team members hereby represent and warrant that they have not: (i) colluded with any other group or person that is submitting a proposal in response to the RFP in order to fix or set prices; (ii) acted in such a manner so as to discourage any other group or person from submitting a proposal in response to the RFP; or (iii) otherwise engaged in conduct that would violate applicable anti-trust law.
5. The Offeror's proposal is subject to the following requested changes to the Form of Contract: [INSERT REQUESTED CHANGES. OFFERORS ARE ADVISED THAT THE CHANGES SO IDENTIFIED SHOULD BE SPECIFIC SO AS TO PERMIT THE OFFICE TO EVALUATE THE IMPACT OF THE REQUESTED CHANGES IN ITS REVIEW PROCESS. GENERIC STATEMENTS, SUCH AS "A MUTUALLY ACCEPTABLE CONTRACT" ARE NOT ACCEPTABLE. OFFERORS ARE FURTHER ADVISED THAT THE OFFICE WILL CONSIDER THE REQUESTED CHANGES AS PART OF THE EVALUATION PROCESS.]
6. The Offeror hereby certifies that neither it nor any of its team members have entered into any agreement (written or oral) that would prohibit any contractor, subcontractor or subconsultant that is certified by the District of Columbia Office of Department of Small and Local Business Enterprises as a Local, Small, Resident Owned or Disadvantaged Business Enterprise (collectively, "LSDBE Certified Companies") from participating in the work if another company is awarded the contract.
7. This bid form and the Offeror's Bid are being submitted on behalf of [INSERT FULL LEGAL NAME, TYPE OF ORGANIZATION, AND STATE OF FORMATION FOR THE OFFEROR].

Sincerely,

Mr. Ollie Harper

[DATE]

Page 3

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Attachment C

The Offeror and each of its principal team members, if any, must submit a statement that discloses any past or present business, familiar or personal relationship with any of the following individuals:

A. D.C. Office of Public Education Facilities Modernization

Ollie Harper	Acting Executive Director
Lucian Coleman	Interim Chief of Staff
Massimo Marchiori	Chief Financial Officer
Charles Brown, Jr.	Acting General Counsel

Please identify any past or present business, familiar, or personal relationship in the space below. Use extra sheets if necessary.

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B. Leftwich & Ludaway

Thomas D. Bridenbaugh

Please identify any past or present business, familiar, or personal relationship in the space below. Use extra sheets if necessary.

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C. Brailsford & Dunlavey  
McKissack & McKissack

Please identify any past or present business, familiar, or personal relationship in the space below. Use extra sheets if necessary.

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This is to certify that, to the best of my knowledge and belief and after making reasonable inquiry, the above represents a full and accurate disclosure of any past or present

business, familiar, or personal relationship with any of the individuals listed above. The undersigned acknowledges and understands that this Disclosure Statement is being submitted to the False Claims Act and that failure to disclose a material relationship(s) may constitute sufficient grounds to disqualify the Offeror.

This is to certify that, to the best of my knowledge and belief and after making reasonable inquiry, the above represents a full and accurate disclosure of any past or present business, familiar, or personal relationship with any of the individuals listed above. The undersigned acknowledges and understands that this Disclosure Statement is being submitted to the False Claims Act and that failure to disclose a material relationship(s) may constitute sufficient grounds to disqualify the Offeror.

OFFEROR:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Office of the Chief Financial Officer**

**Office of Tax and Revenue**



**TAX CERTIFICATION AFFIDAVIT**

**THIS AFFIDAVIT IS TO BE COMPLETED ONLY BY THOSE WHO ARE REGISTERED TO CONDUCT BUSINESS IN THE DISTRICT OF COLUMBIA.**

**Date**

**Authorized Agent**

**Name of Organization/Entity**

**Business Address (include zip code)**

**Business Phone Number**

**Authorized Agent**

**Principal Officer Name and Title**

**Square and Lot Information**

**Federal Identification Number**

**Contract Number**

**Unemployment Insurance Account No.**

I hereby authorize the District of Columbia, Office of the Chief Financial Officer, Office of Tax and Revenue to release my tax information to an authorized representative of the District of Columbia agency with which I am seeking to enter into a contractual relationship. I understand that the information released will be limited to whether or not I am in compliance with the District of Columbia tax laws and regulations solely for the purpose of determining my eligibility to enter into a contractual relationship with a District of Columbia agency. I further authorize that this consent be valid for one year from the date of this authorization.

I hereby certify that I am in compliance with the applicable tax filing and payment requirements of the District of Columbia. The Office of Tax and Revenue is hereby authorized to verify the above information with the appropriate government authorities.

**Signature of Authorizing Agent**

**Title**

The penalty for making false statement is a fine not to exceed \$5,000.00, imprisonment for not more than 180 days, or both, as prescribed by D.C. Official Code §47-4106.

## ATTACHMENT E

General Decision Number: DC100004 04/15/2011 DC4

Superseded General Decision Number: DC20080004

State: District of Columbia

Construction Type: Building

County: District of Columbia Statewide.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Modification Number	Publication Date
0	03/12/2010
1	03/19/2010
2	06/11/2010
3	07/09/2010
4	07/23/2010
5	08/20/2010
6	09/24/2010
7	11/05/2010
8	11/26/2010
9	12/10/2010
10	12/24/2010
11	01/07/2011
12	01/21/2011
13	04/15/2011

ASBE0024-007 10/01/2009

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 30.43	14.43

Includes the application of all insulating materials,  
protective coverings, coatings and finishes to all types of  
mechanical systems

-----  
ASBE0024-008 10/01/2009

	Rates	Fringes
ASBESTOS WORKER: HAZARDOUS MATERIAL HANDLER (REMOVAL FROM MECHANICAL SYSTEMS, WHICH WILL NOT BE REPLACED OR SCRAPPED).....	\$ 18.85	7.10

-----  
BRDC0001-002 05/03/2010

	Rates	Fringes
BRICKLAYER.....	\$ 27.21	7.21

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CARP0132-008 05/01/2010

	Rates	Fringes
--	-------	---------

CARPENTER, Includes Drywall  
Hanging, Formsetting, and  
Soft Floor (Carpet)

Installation.....	\$ 26.38	7.00
PILEDRIVERMAN.....	\$ 24.48	7.80

-----  
CARP1831-002 04/01/2010

	Rates	Fringes
MILLWRIGHT.....	\$ 27.91	10.90

-----  
\* ELEC0026-016 06/01/2010

	Rates	Fringes
ELECTRICIAN, Including HVAC Temperature Control Installation.....	\$ 39.02	12.82

-----  
ELEC0026-017 09/01/2008

	Rates	Fringes
ELECTRICIAN: COMMUNICATION TECHNICIAN.....	\$ 24.25	3%+6.87

SCOPE OF WORK: Includes low voltage construction, installation, maintenance and removal of teledata facilities (voice, data and video) including outside plant, telephone and data inside wire, interconnect, terminal equipment, central offices, PABX, fiber optic cable and equipment, railroad communications, micro waves, VSAT, bypass, CATV, WAN (Wide area networks), LAN (Local area networks) and ISDN (Integrated systems digital network).

WORK EXCLUDED: The installation of computer systems in industrial applications such as assembly lines, robotics and computer controller manufacturing systems. The installation of conduit and/or raceways shall be installed by Inside Wiremen. On sites where there is no Inside Wireman employed, the Teledata Technician may install raceway or conduit not greater than 10 feet. Fire alarm work is excluded on all new construction sites or wherever the fire alarm system is installed in conduit. All HVAC control work.

-----  
ELEV0010-001 01/01/2010

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 37.30	20.035+a+b

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for



6 months to 5 years of service as vacation pay credit.

-----  
IRON0005-005 06/01/2009

	Rates	Fringes
IRONWORKER, ORNAMENTAL AND STRUCTURAL.....	\$ 28.83	13.295

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IRON0201-006 05/01/2009

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 25.20	14.33

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LABO0657-015 06/01/2010

	Rates	Fringes
LABORER: Skilled.....	\$ 20.71	5.97

FOOTNOTE: Potmen, power tool operator, small machine operator, signalmen, laser beam operator, waterproofer, open caisson, test pit, underpinnig, pier hole and ditches, ladders and all work associated with lagging that is not expressly stated, strippers, operator of hand derricks, vibrator operators, pipe layers, or tile layers, operators of jackhammers, paving breakers, spaders or any machine that does the same general type of work, carpenter tenders, scaffold builders, operators of towmasters, scootcretes, buggymobiles and other machines of similar character, operators of tampers and rammers and other machines that do the same general type of work, whether powered by air, electric or gasoline, builders of trestle scaffolds over one tier high and sand blasters, power and chain saw operators used in clearing, installers of well points, wagon drill operators, acetylene burners and licensed powdermen, stake jumper, structural demolition.

-----

MARB0002-004 07/01/2010

	Rates	Fringes
MARBLE/STONE MASON.....	\$ 32.63	13.94

INCLUDING pointing, caulking and cleaning of All types of masonry, brick, stone and cement EXCEPT pointing, caulking, cleaning of existing masonry, brick, stone and cement (restoration work)

-----

MARB0003-006 05/01/2010

	Rates	Fringes
TERRAZZO WORKER/SETTER.....	\$ 26.04	9.59

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MARB0003-007 05/01/2010

	Rates	Fringes
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TERRAZZO FINISHER.....	\$ 20.48	8.44
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MARB0003-008 05/01/2010

	Rates	Fringes
--	-------	---------

TILE SETTER.....	\$ 25.29	9.59
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MARB0003-009 05/01/2010

	Rates	Fringes
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TILE FINISHER.....	\$ 20.48	8.44
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PAIN0051-014 06/01/2010

	Rates	Fringes
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GLAZIER

Glazing Contracts \$2 million and under.....	\$ 24.57	8.31
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Glazing Contracts over \$2 million.....	\$ 27.29	8.31
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PAIN0051-015 06/01/2010

	Rates	Fringes
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PAINTER

Brush, Roller, Spray and Drywall Finisher.....	\$ 24.64	7.86
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PLAS0891-005 07/01/2009

	Rates	Fringes
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PLASTERER.....	\$ 27.00	5.82
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PLAS0891-006 05/01/2010

	Rates	Fringes
--	-------	---------

CEMENT MASON/CONCRETE FINISHER...	\$ 27.15	9.58
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PLAS0891-007 07/01/2009

	Rates	Fringes
--	-------	---------

FIREPROOFER

Handler.....	\$ 11.50	3.89
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Mixer/Pump.....	\$ 14.00	3.89
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Sprayer.....	\$ 19.00	3.89
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Spraying of all Fireproofing materials. Hand application of Fireproofing materials. This includes wet or dry, hard or soft. Intumescent fireproofing and refraction work, including, but not limited to, all steel beams, columns, metal decks, vessels, floors, roofs, where ever fireproofing is required. Plus any installation of thermal and acoustical insulation. All that encompasses setting up

for Fireproofing, and taken down. Removal of fireproofing materials and protection. Mixing of all materials either by hand or machine following manufactures standards.

-----  
PLUM0005-008 08/01/2010

	Rates	Fringes
PLUMBER		
Apartment Buildings over 4 stories (except hotels).....	\$ 22.66	9.36+a
ALL Other Work.....	\$ 37.67	14.69+a

a. PAID HOLIDAYS: Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day and the Fourth of July.

-----  
PLUM0602-008 11/01/2010

	Rates	Fringes
PIPEFITTER, Including HVAC		
Pipe Installation.....	\$ 36.87	16.72+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving and Christmas Day.

-----  
ROOF0030-016 05/01/2009

	Rates	Fringes
ROOFER.....	\$ 25.80	8.26

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\* SFDC0669-002 04/01/2011

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 29.95	17.00

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SHEE0100-015 01/01/2011

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct Installation).....	\$ 35.59	13.01

-----  
SUDC2009-003 05/19/2009

	Rates	Fringes
LABORER: Common or General.....	\$ 13.04	2.80
LABORER: Mason Tender - Cement/Concrete.....	\$ 15.40	2.85

LABORER: Mason Tender for

pointing, caulking, cleaning  
of existing masonry, brick,  
stone and cement structures  
(restoration work); excludes  
pointing, caulking and  
cleaning of new or  
replacement masonry, brick,  
stone and cement.....\$ 11.67

POINTER, CAULKER, CLEANER,  
Includes pointing, caulking,  
cleaning of existing masonry,  
brick, stone and cement  
structures (restoration  
work); excludes pointing,  
caulking, cleaning of new or  
replacement  
masonry, brick, stone or  
cement.....\$ 18.88

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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Unlisted classifications needed for work not included within  
the scope of the  
classifications listed may be added after award only as  
provided in the labor  
standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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In the listing above, the "SU" designation means that rates  
listed under the  
identifier do not reflect collectively bargained wage and  
fringe benefit  
rates. Other designations indicate unions whose rates have  
been determined  
to be prevailing.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can  
be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on  
a wage  
determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).  
Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

## Attachment F

### Certification Letter for Cashier's Check or Irrevocable Letter of Credit

Offerors who submit a cashier's check or an irrevocable letter of credit ("Alternate Bid Security") in lieu of a bid bond must also submit this certification, properly notarized, with their proposal. By executing this document, Offeror acknowledges that, if awarded this contract, Offeror shall be required to post promptly a payment and performance bond equal to the full value of the contract. In the event Offeror fails to post such payment and performance bond, the Offeror understands and agrees that: (i) the Office shall draw upon the Alternate Bid Security as liquidated damages; (ii) the award and/or contract shall be terminated; (iii) for a period of two (2) years thereafter, the Office will not accept from such Offeror Alternate Bid Security in lieu of a bid bond; and (iv) the Offeror hereby waives the right to protest the termination of any such award or contract. The Offeror further acknowledges and agrees that the damages the Office would experience in the event such award or contract are terminated due to the Offeror's failure to post a payment and performance bond are difficult to determine and that the value of the Alternate Bid Security represents a reasonable estimate of the damages the Office would incur.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

District of Columbia) ss:

On the \_\_\_\_ day of \_\_\_\_\_, 2011, before me, a notary public in and for the District of Columbia, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be \_\_\_\_\_ of \_\_\_\_\_, and that he/she as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

# AIA<sup>®</sup> Document A105<sup>™</sup> – 2007

## **Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project**

AGREEMENT made as of the \_\_\_\_\_ day of May in the year 2011  
(In words, indicate day, month and year)

BETWEEN the Owner:

(Name, address and other information)

Government of the District of Columbia acting by and through  
Office of Public Education Facilities Modernization  
2400 East Capitol Street, SE  
Washington, D.C. 20003

and the Contractor:

(Name, address and other information)

TBD

for the following Project:

(Name, location and detailed description)

Logan Elementary School  
215 G Street, NE  
Washington, DC 20002

Logan Elementary School Renovation for the Watkins Elementary Montessori School Program (the "Project").

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

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### ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

.1 this Agreement signed by the Owner and Contractor;

.2 the Drawings and Specifications attached here to as **Exhibit A**;

Drawings:

Number	Title	Date
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Specifications:

Section	Title	Pages
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.3 addenda prepared by the architect as follows:

Number	Date	Pages
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.4 written orders for changes in the Work issued after execution of this Agreement; and

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.5 other documents, if any, identified as follows:

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The period of time available to the Contractor to substantially complete the Work is the Contract Time. The date of commencement of the Work shall be the date of the written notice to proceed issued by the Owner to the Contractor. The Contractor shall substantially complete the Work, no later than August 14, 2011, subject to adjustment as provided in Article 10 and Article 11.

*(Paragraphs deleted)*

## ARTICLE 3 CONTRACT SUM

§ 3.1 Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

[INSERT AMOUNT (\$)]

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:

*(Paragraph deleted)*

Portion of Work	Value
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§ 3.3 Unit prices, if any, are as follows:

*(Paragraph deleted)*

Item	Units and Limitations	Price per Unit
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§ 3.4 Allowances included in the Contract Sum, if any, are as follows:

*(Paragraph deleted)*

Item	Price
1. Remove all light fixture lenses and clean. Replace any lamps or ballasts as required.	\$10,000
2. Interior door and hardware repairs.	\$5,000
3. Replace or add locks to all hallway electrical panels	\$2,000
4. Replace existing window A/C unit with similar unit	\$10,000
5. Repair basement leaks.	\$35,000
6. Final interior deep cleaning of building. This includes all portions of the interior of the building including "For Future Use spaces."	\$15,000
7. Striping on asphalt in plaza area.	\$2,500
8. Window Repairs.	\$5,000

Allowances shall only cover the direct cost of the work. All associated overhead, profit, and general conditions costs should be included in the base Contract Sum.

§ 3.5 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:

[INSERT SELECTED ALTERNATES]

§ 3.6 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

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#### ARTICLE 4 PAYMENT

§ 4.1 Based on Contractor's Applications for Payment, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

*(Paragraphs deleted)*

§ 4.1.1 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 4.1.2 Provided that an Application for Payment is received not later than the 25th day of month, the Owner shall make payment to the Contractor not later than the last day of the month following submission or, if that is not a business day, on the following business day. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than sixty (60) days after the Owner receives the Application for Payment.

§ 4.1.3 The Owner shall withhold from each progress payment an amount equal to ten percent (10%).

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

*(Paragraph deleted)*

#### ARTICLE 5 INSURANCE

§ 5.1 The Contractor shall provide Contractor's general liability and other insurance as follows:

*(Table deleted)(Paragraph deleted)*

§ 5.1.1 The Contractor will be required to maintain the following types of insurance throughout the life of the Contract.

- .1 Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Two Million Dollars (\$2,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Two Million Dollars (\$2,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage and must be maintained for a period of at least three (3) years after substantial completion occurs..
- .2 Workers' compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.
- .3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.

§ 5.1.2 Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Owner and the District of Columbia, and the officers, agents and employees of each. Such insurance shall not be cancelable or reduced without thirty (30) days prior written notice to the Owner.

§ 5.1.3 All such insurance shall contain a waiver of subrogation against the Owner and the District of Columbia, and their respective agents.

§ 5.1.4 All such insurance policies shall be written by a company that is rated at least A- by A.M. Best and having a surplus size rating of at least XV.

#### § 5.2 BONDS

*(Paragraphs deleted)*

§ 5.2.1 Prior to commencing the Work, the Contractor shall provide to the Owner a payment bond and a performance bond, each with a penal sum equal to the full value of the Contract Sum. Such bonds shall remain in full force and effect until Final Completion is achieved, and the Owner shall be able to draw upon such bond regardless of the amount paid by the Owner to the Contractor, even if such amount exceeds the penal value of such bond.

§ 5.2.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## **ARTICLE 6 GENERAL PROVISIONS**

### **§ 6.1 THE CONTRACT**

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

### **§ 6.2 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

### **§ 6.3 INTENT**

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

### **§ 6.4 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

Any and all documents prepared by the Contractor's architect for use with respect to this Project shall become property of the Owner.

§ 6.5 The Owner shall obtain a building permit for the Project and pay for the costs associated with such permit, if necessary. The Owner shall cooperate with the Contractor in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Contractor under the Contract Documents.

## **ARTICLE 7 OWNER**

### **§ 7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

*(Paragraphs deleted)*

### **§ 7.2 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

### **§ 7.3 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

### **§ 7.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

§ 7.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

§ 7.4.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

## ARTICLE 8 CONTRACTOR

### § 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 8.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Owner.

### § 8.2 CONTRACTOR'S CONSTRUCTION SCHEDULE

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work.

### § 8.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 8.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner has made a timely and reasonable objection.

§ 8.3.3 The Contractor shall complete the Project in accordance with the Drawings and Specifications. In the event there is a discrepancy between the Drawings and Specifications, the Contractor shall be required to comply with the more expensive requirement.

§ 8.3.4 In performing the Work, the Contractor shall be required complete the following.

- .1 The Contractor shall perform all of the work in first class and workmanlike manner. Any equipment called for in the drawings and specifications shall be new unless otherwise approved by the Owner in advance and in writing.
- .2 The Contractor shall provide submittals if indicated in the drawings and specifications to the Owner for its review and approval prior to proceeding with the work.
- .3 The Contractor's scope of work shall include the installation and provision of such safety barricades and enclosures as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law.
- .4 [intentionally omitted].
- .5 The Contractor shall be reasonably required by Owner to provide such safety barricades, enclosures and overhead protection as may be necessary to safely implement the Work and to remove such at the end of the work and shall leave the site in broom clean condition.
- .6 The Contractor shall be responsible for obtaining all job permits and approvals from the District of Columbia Regulatory Agency that are required to perform and complete the installation at no additional cost to the Owner. It is understood, however, that the Owner shall obtain and provide a building permit for the Project, if necessary.
- .7 [intentionally omitted].
- .8 The Owner will hold any necessary abatement and hygienist contracts for the abatement of hazardous materials on the Project site. The Contractor will be required to coordinate the abatement efforts with the abatement contractors.

- .9 The costs of any necessary security are included in the Contract Sum.
- .10 The Contractor's scope of work shall include all necessary maintenance of traffic measures, including, but not limited to, signs, flagman, steel plates, etc. The Contractor shall be responsible for preparing any necessary maintenance of traffic plans and for obtaining any required lane closure permits.
- .11 The Contractor shall leave the site in a clean and orderly fashion. Any trenches shall be neatly and properly filled and seeded in accordance with the drawings and specifications.
- .12 The Contractor shall provide a construction entrance and wheel washing station, if required, in accordance with the specifications. The Contractor shall prevent the accumulation of mud or dirt on the surrounding rounds and shall be responsible for cleaning and/or removing any such accumulation that may occur.

§ 8.3.5 In performing the Work, the Contractor shall be required to properly supervise and coordinate its work. At a minimum, it is envisioned that the Contractor will be required to undertake the following tasks:

- .1 Participate and assist in Project/Planning meetings.
- .2 Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.
- .3 Conduct weekly progress meetings following a Contractor generated agenda with the Program Manager.
- .4 Provide general safety and signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project.
- .5 Prepare payment requests, verify accuracy and forward to Owner for approval and payment.
- .7 Assemble close-out documents required.
- .8 Provide assistance to the Owner through any applicable warranty periods.

#### § 8.4 LABOR AND MATERIALS

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### § 8.5 WARRANTY

The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

#### § 8.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

#### § 8.7 PERMITS, FEES AND NOTICES

§ 8.7.1 The Owner shall obtain and pay for the building permit for the Project, if necessary. The Contractor shall obtain and pay for any and all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. The Owner shall cooperate with the Contractor in securing such permits,

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licenses and inspections, provided however, the Owner shall not be required to pay the fees for such permits, licenses and inspections.

**§ 8.7.2** The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

#### **§ 8.8 SUBMITTALS**

The Contractor shall promptly review, approve in writing and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals if required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

#### **§ 8.9 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

#### **§ 8.10 CUTTING AND PATCHING**

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

#### **§ 8.11 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

#### **§ 8.12 INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

*(Paragraphs deleted)*

#### **ARTICLE 9 [INTENTIONALLY OMITTED]**

#### **ARTICLE 10 CHANGES IN THE WORK**

**§ 10.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, by Change Order.

**§ 10.2** A Change Order is a written instrument signed by the Owner and Contractor stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

**§ 10.3** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

**§ 10.4 Change-Order Markup** The maximum markup for change order work shall be as follows: For Work performed by the Contractor's own forces, the Contractor shall be entitled to a markup of no more than fifteen percent (15%) on its direct costs for overhead and profit (such markup is inclusive of bond and insurance and includes costs for all personnel above the level of a working foreman). For Work performed by a subcontractor, the subcontractor shall be

entitled to a markup of no more than fifteen percent (15%) (such markup is inclusive of the subcontractor's bond and insurance and includes costs for all of the subcontractor's personnel above the level of a working foreman), and the Contractor or any higher tier subcontractor shall be entitled to a markup of five percent (5%) for overhead and profit. In all cases, the aggregate markup on the direct cost of the Work shall not exceed twenty-five percent 25%.

## ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 **Delays and Extensions of Time.** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Contract Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. It is understood and agreed that the Contractor shall not be entitled to an increase in the Contract Price for such a delay.

§ 11.2.1 Claims relating to time shall be made in accordance with applicable provisions of Section 11.3.

### § 11.3 Claims for Additional Time

§ 11.3.1 The Contractor shall be entitled to increase in the Contract Time in the event of an "Excusable Delay" as defined in Section 11.3.2 provided written notice of such Excusable Delay is given in accordance with the terms of this Agreement. The Contractor's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§11.3.2 The term "Excusable Delay" shall mean:

- .1 Failure by the Owner to perform any act required of the Owner in accordance with timeframes agreed upon by the parties in writing and provided the Owner is given written notice of such failure;
- .2 Changes to the design requested by the Owner, but only to the extent that the Contractor informs the Owner, in writing, that such a change will necessitate an adjustment to the Contract Time; **provided, however,** that to the extent the design change so requested is necessary in order to make the Project comply with the Project Criteria, the delay shall not be Excusable;
- .3 Labor disputes, acts of terrorism, war, civil unrest or the public enemy, fire, unavoidable casualties and other force majeure events, or governmental acts or omissions, not due to the fault or neglect of Contractor or anyone for whom Contractor is liable;
- .4 Delays authorized by the Owner pending mediation and arbitration;
- .5 Delays caused by the discovery of archaeological or hazardous materials;
- .6 Adverse weather conditions documented by data substantiating that weather conditions were abnormal compared to the averages issued by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Agreement and had an adverse effect on the scheduled construction. For purposes of this clause, weather shall only be deemed "adverse" if the weather in question was more severe than that encountered at the Project site over the last ten (10) years for the month in question. Such determinations shall be made based on the number of rain/snow days or the cumulative precipitation total for the month in question. Notwithstanding the foregoing, named storms shall conclusively be deemed "adverse"; or
- .7 Other causes materially beyond the Contractor's reasonable and expected control that could not have been mitigated by a competent design-builder.



In addition to the foregoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay is on the critical path of the Project Schedule. Further, the Contractor shall be required to use commercially reasonably best efforts to mitigate the impact of any such Excusable Delay.

## **ARTICLE 12 PAYMENTS AND COMPLETION**

### **§ 12.1 CONTRACT SUM**

The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **§ 12.2 APPLICATIONS FOR PAYMENT**

**§ 12.2.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment for Work completed in accordance with the values stated in the Agreement. Such Application shall be supported by data substantiating the Contractor's right to payment as the Owner may reasonably require. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

**§ 12.2.2** By submitting an Application for Payment, the Contractor warrants to the Owner that title to all Work for which payment is sought will pass to the Owner, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Owner may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss shall remain with the Contractor until Substantial Completion, unless otherwise agreed by the Owner in writing.

### **§ 12.3 [INTENTIONALLY OMITTED]**

### **§ 12.4 PROGRESS PAYMENTS**

**§ 12.4.1** The Owner shall make payment in the manner provided in the Contract Documents.

**§ 12.4.2** The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

**§ 12.4.3** The Owner shall not have responsibility for payments to a subcontractor or supplier.

**§ 12.4.4** A progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

### **§ 12.5 SUBSTANTIAL COMPLETION**

**§ 12.5.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

**§ 12.5.2** When the Work or designated portion thereof is substantially complete, the Owner will make an inspection to determine whether the Work is substantially complete. If the Owner's inspection discloses any item which is not substantially complete, the Contractor shall promptly complete or correct such item. In such case, the Contractor shall then submit a request for another inspection by the Owner to determine whether the Work is substantially complete. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof.

### **§ 12.6 FINAL COMPLETION AND FINAL PAYMENT**

**§ 12.6.1** Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner will promptly make final payment to the Contractor.

**§ 12.6.2** Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

*(Paragraph deleted)*

#### **ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

#### **ARTICLE 14 CORRECTION OF WORK**

§ 14.1 The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents. The Contractor shall assign any and all manufacturer or other product warranties to the Owner upon Substantial Completion.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

#### **ARTICLE 15 MISCELLANEOUS PROVISIONS**

##### **§ 15.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

##### **§ 15.2 TESTS AND INSPECTIONS**

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 The Owner shall bear cost of tests, inspections or approvals that do not become requirements until after the Contract is executed.

*(Paragraph deleted)*

##### **§ 15.3 GOVERNING LAW**

*(Paragraph deleted)*

§ 15.3.1 The Contract shall be governed by the laws of the District of Columbia.

§ 15.3.2 All federal and District of Columbia laws and regulations, and all Owner procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Owner. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Owner's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

§ 15.3.3 Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Contract.

§ 15.3.4 The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

§ 15.3.5 The Contractor agrees that the construction work performed under this Contract shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

§ 15.3.6 The Contractor agrees that the construction work performed under this Contract shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to this Project are attached as Exhibit B. The Contractor further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

§ 15.3.7 Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 22-2514.

§ 15.3.8 The Owner's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Owner, nor shall it constitute an obligation for which the Owner is obligated to levy or pledge any form of taxation, or for which the Owner has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

#### ARTICLE 16 TERMINATION OF THE CONTRACT

##### § 16.1 TERMINATION BY THE CONTRACTOR

If the Owner fails to make payment as provided in Section 12.4.1 for a period of 60 days, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

##### § 16.2 TERMINATION BY THE OWNER FOR CAUSE

§ 16.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

##### § 16.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work actually executed. In no event shall the Contractor be entitled to recover overhead and profit on Work that was not performed.

## ARTICLE 17 OTHER TERMS AND CONDITIONS

(Insert any other terms or conditions below.)

(Table deleted)

(Paragraphs deleted)

### § 17.1 WRITTEN NOTICE

§ 17.1.1 All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by telecopier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Owner:

If to the Contractor:

Ollie Harper  
Acting Executive Director  
Office of Public Education  
Facilities Modernization  
2400 East Capitol Street, SE  
Washington, DC 20003

[TBD]

This Paragraph shall be read as imposing minimum requirements for distribution of required notices, and not as displacing distribution requirements stated in the Contract with respect to design documents, construction submittals, periodic reports, and other documents.

### § 17.2 LSDBE UTILIZATION

§ 17.2.1 The Contractor shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least 50% of the Contract. Of this amount, thirty-five percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Office and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal.

§ 17.2.2 The Contractor has developed an LSDBE Utilization Plan that is attached hereto as Exhibit C. The Contractor shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subcontractors and Supply Agreements.

§ 17.2.3 Neither the Contractor or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Owner approves of such removal. The Owner may condition its approval upon the Contractor developing a plan that is, in the Owner's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

### § 17.3 EQUAL EMPLOYMENT OPPORTUNITY AND HIRING OF DISTRICT RESIDENTS

§ 17.4.1 The Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 17.3.2 The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's Team and every subconsultant's and subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Contractor, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

§ 17.3.3 Fifty percent (50%) of all apprentices for the Project must be District residents. If the Contractor or any of its subcontractors fail to use its best efforts to meet this goal, the Contractor or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract.

### § 17.4 ECONOMIC INCLUSION REPORTING REQUIREMENTS

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§ 17.4.1 Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Owner a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

§ 17.4.2 The Contractor and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

§ 17.4.3 The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

§ 17.4.4 The Contractor shall be responsible for: (i) including the provisions of this Section 17.5. in all subcontracts; (ii) collecting the information required in this Section 17.5 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Contractor pursuant to Section 17.5.

§ 17.4.5 The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 36-401, *et seq.*

#### § 17.5 RETENTION OF RECORDS AND INSPECTIONS AND AUDITS

§ 17.5.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

§ 17.5.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Owner and the required cost submissions in effect on the date of execution of the Owner.

§ 17.5.3 The Owner, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

§ 17.5.4 The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000.00) that directly relate to Project performance.

§ 17.5.5 Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.

§ 17.5.6 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Owner. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

§ 17.5.7 The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

#### § 17.6 ANTI-COMPETITIVE PRACTICES AND ANTI-KICKBACK PROVISIONS

§ 17.6.1 The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or

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restrains trade. The Owner shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

§ 17.6.2 The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Owner. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Owner may take any recourse available to it under the law for violations of this anti-kickback provision.

§ 17.6.3 The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

#### § 17.7 ETHICAL STANDARDS FOR OWNER'S EMPLOYEES AND FORMER EMPLOYEES

§ 17.7.1 The Owner expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Owner not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Owner or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Owner or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Owner, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Owner personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

#### § 17.8 GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS

§ 17.8.1 If it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Owner or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Owner may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

§ 17.8.2 In the event the Contract is terminated as provided in Section 17.8.1, the Owner shall be entitled:

- .1 to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
- .2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

§ 17.8.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Owner shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Owner in which he or any officer or employee of the Owner shall be personally interested as well as all agreements made by the Owner in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Owner or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

#### § 17.9 COVENANT AGAINST CONTINGENT FEES PROVISIONS

§ 17.9.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee,

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excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Owner shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Owner, percentage, brokerage of contingent fee.

#### **§ 17.10 NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS**

**§ 17.10.1** The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

- .1 Employment, upgrading, or transfer;
- .2 Recruitment or recruitment advertising;
- .3 Demotion, layoff, or termination;
- .4 Rates of pay, or other forms of compensation; and
- .5 Selection for training and apprenticeship.

**§ 17.10.2** Unless otherwise permitted by law and directed by the Owner, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth the provisions of this Section concerning non-discrimination and affirmative action.

**§ 17.10.3** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

**§ 17.10.4** The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Owner, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**§ 17.10.5** The Contractor agrees to permit access by the Owner to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

**§ 17.10.6** The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

**§ 17.10.7** The Contractor shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

#### **§ 17.11 CONFIDENTIAL INFORMATION**

**§ 17.11.1** In the course of the Contractor's performance of the Work, the Owner may make available to the Contractor information that the Owner designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Owner, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Owner shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

#### **§ 17.12 NO THIRD-PARTY BENEFICIARY RIGHTS.**

§ 17.12.1 Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

**§ 17.13 MEDIA RELEASES**

§ 17.13.1 Neither the Contractor, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Owner prior to its issuance.

**§ 17.14 CONSTRUCTION.**

§ 17.14.1 This Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Agreement.

**§ 17.15 SURVIVAL**

§ 17.15.1 All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

**§ 17.16 NO WAIVER**

§ 17.16.1 If the Owner waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Owner shall be deemed to constitute the Owner's waiver, which may be effected only by an express written waiver signed by the Owner.

**§ 17.17 HEADINGS/CAPTIONS**

§ 17.17.1 The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

**§ 17.18 ENTIRE AGREEMENT; MODIFICATION**

§ 17.18.1 The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Owner and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

**§ 17.19 SEVERABILITY**

§ 17.19.1 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
**CONTRACTOR** (Signature)

\_\_\_\_\_  
(Printed name, title and address)

\_\_\_\_\_  
(Printed name, title and address)

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